

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

MICHAEL A. BURNHART,

Petitioner,

v.

JAMES THATCHER,

Respondent.

Case No. C05-1603-JLR-JPD

ORDER

Petitioner is an inmate at the King County Correctional Facility in Kent, Washington who has filed a pro se 28 U.S.C. § 2254 petition for writ of habeas corpus. Petitioner does not challenge his current sentence. Rather, he attacks his September 19, 2001, sentence in Snohomish County Superior Court for one count of theft of rental, leased or lease-purchased property valued at \$1,500 or more. Dkt. Nos. 9, 10, 25, Ex. 1.<sup>1</sup> The State court sentenced petitioner to twelve months and one day incarceration, with 111 days credit for the time he served prior to sentencing. Dkt. No. 25, Exs. 2, 3. It also imposed restitution and certain other costs, but imposed no community custody, community placement, or other post-incarceration obligation. *Id.* As petitioner's reply indicates, he concluded this sentence on or around March 8, 2002. Dkt. No. 26 at 3.

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<sup>1</sup>On June 1, 2000, petitioner pleaded guilty in Snohomish County Superior Court to one count of theft of rental, leased or lease-purchased property valued at \$1,500 or more. Dkt. No. 25, Ex. 1.

01 The government has filed a response opposing the petition. Dkt. No. 23. Among  
02 other things, it argues that petitioner is no longer in custody pursuant to the challenged  
03 conviction and that the Court therefore lacks jurisdiction. The record, however, is inadequate  
04 to make this determination.

05 In order for a federal court to have jurisdiction to issue a writ of habeas corpus, the  
06 petitioner must be “in custody pursuant to the judgment of a State court . . . in violation of the  
07 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Maleng v. Cook*,  
08 490 U.S. 488, 490, 494 (1989) (per curiam). This requires that the petitioner be in custody  
09 pursuant to the sentence he is attacking by way of his petition. *Maleng*, 490 U.S. at 490-91.  
10 The in-custody requirement can be satisfied by physical incarceration, supervised release,  
11 court-ordered treatment programs, and other conditions that impose significant limitations on  
12 a petitioner’s liberty. *Williamson v. Gregoire*, 151 F.3d 1180, 1182 (9th Cir. 1998) (internal  
13 citations omitted). In limited circumstances, the in custody requirement for an expired  
14 sentence can be satisfied when a petitioner is currently incarcerated on a second, related  
15 sentence. *See Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394 (2001); *Brock v.*  
16 *Weston*, 31 F.3d 887 (9th Cir. 1994). However, “once the sentence imposed for a conviction  
17 has completely expired, the collateral consequences of that conviction are not themselves  
18 sufficient to render an individual in custody for purposes of the habeas attack upon it.”  
19 *Maleng*, 490 U.S. at 492.

20 The record in this case is insufficient to accurately determine whether the in custody  
21 requirement is satisfied. Therefore, pursuant to Rule 7 of the Rules Governing § 2254 Cases  
22 in U.S. District Courts, the Court directs respondent to supplement the record with  
23 information regarding:

24 (1) When petitioner completed his 2001 sentence, or confirmation that the March 8,  
25 2002, release date that petitioner indicated in his responsive brief is accurate;  
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01 (2) The charge(s), duration, and expected release date of the sentence petitioner is  
02 currently serving; and

03 (3) The relationship of petitioner's current sentence, if any, to his challenged 2001  
04 sentence.

05 Respondent shall provide the above-described information **no later than May 18,**  
06 **2006.** After respondent has supplemented the record, petitioner shall file a response that  
07 addresses the correctness of the supplemental materials. Petitioner's response shall be filed  
08 **no later than June 1, 2006.** A showing of good cause in advance of the deadline is required  
09 if either party wishes to extend these deadlines.

10 The Clerk is directed to send a copy of this order to petitioner, respondent, and to the  
11 Honorable James L. Robart.

12 DATED this 18th day of April, 2006.

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14 JAMES P. DONOHUE  
15 United States Magistrate Judge  
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